



Connecticut Business & Industry Association

---

**TESTIMONY OF ERIC J. BROWN  
ASSOCIATE COUNSEL  
CONNECTICUT BUSINESS AND INDUSTRY ASSOCIATION  
BEFORE THE  
COMMERCE COMMITTEE**

**March 9, 2010**

Good afternoon. My name is Eric Brown and I am associate counsel with the Connecticut Business and Industry Association (CBIA). CBIA represents thousands of businesses of all sizes throughout Connecticut that provide hundreds of thousands of Connecticut citizens with good jobs and good benefits.

**CBIA is pleased to have this opportunity to voice concerns with section 1 of:**

**H.B. No. 5436 (RAISED) AN ACT CONCERNING BROWNFIELD  
REMEDiation LIABILITY**

CBIA is grateful to this committee for continuing to make brownfields remediation a priority for the state. As Connecticut prepares for economic recovery, this is clearly the time to take measures to insure Connecticut is in position to draw economic development investment.

Unfortunately, in speaking with a variety of CBIA members who are deeply involved in brownfield development in Connecticut and elsewhere, we heard great concern regarding section 1 of HB-5436.

Section 1 would establish an entirely new private cause of action under Connecticut law that is extraordinarily far reaching. While at first take, one might consider this a benefit as a tool for going after former polluters to pay for brownfield revitalization; in reality we believe the bill would have just the opposite effect.

Those who wear the label "developer" in the brownfield business take on other titles during the process such as "owner", "transferee" and "mortgagee." Under the current version of this bill, in these other capacities, potential developers will step right into the liability web this bill creates.

Even municipalities loose under the bill as without developers or other parties that are willing to step in and take control of such properties, they will remain desolate eyesores on our municipal landscapes.

Among other concerns expressed by our members:

1. This is really not a brownfields bill. In fact, brownfields will suffer because developers will be driven off.
2. The bill applies to any contamination at any property, not just brownfields -- even those where contamination does not necessarily exceed RSR.
3. Inconsistent with Voluntary Remediation, Covenant Not to Sue, Third Party Liability provisions of CGS 22a 133.
4. Inconsistent with Transfer Act: no protection.
5. Municipalities can be looped back into liability thru contribution actions.
6. Banks and developers can be named in contribution actions.
7. Developers working with municipality will be doubtless sued for contribution.
8. DOT and other agencies very susceptible to suit.
9. No one in development community has asked for this
10. This provides perception of CT as litigious state.
11. Officious intermeddlers can pose as "performing parties" to leverage litigation, settlements, attorney fees, and not brownfield development.
12. Bill potentially unconstitutional as delegation of state powers to private parties (i.e. CERCLA 106 order authority).